PT 00-35
Tax Type: Property Tax
Issue: Agricultural Purposes/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

EDWARDS COUNTY FAIR ASSOCIATION		
	A.H. Docket #	**99-PT-0045**
Applicant		
	Docket #	**98-24-3**
v.		
	Parcel Index #	**2-03-086-06**
THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Samuel L. Fieber, attorney at law, appeared on behalf of the Edwards County Fair Association.

Synopsis:

The hearing in this matter was held at the Department of Transportation Building, 1100 Eastport Plaza Drive, Collinsville, Illinois, on November 2, 1999, to determine whether or not Edwards County Parcel Index No. 2-03-086-06 qualified for exemption from real estate taxation for the 1998-assessment year.

Mr. Donald E. Woods, Secretary of the Edwards County Fair Association (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include: first, whether the applicant owned this parcel during the 1998-assessment year; secondly, whether the applicant is an agricultural association; and finally,

whether the applicant used this parcel, the horse barn, and the pole barn located thereon for agricultural purposes or were said parcel and barns used with a view to profit during 1998. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned this parcel during the entire 1998-assessment year. It is also determined that the applicant is an agricultural society. Finally, it is determined that this parcel and the barns thereon were used with a view to profit during the 1998-assessment year. It i

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel and the barns located thereon were not in exempt use during the 1998-assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. The applicant was incorporated pursuant to "An Act concerning corporations" on August 7, 1933, for the following purpose:

Agricultural Fair exhibits. (Dept. Ex. No. 2L)

3. The applicant acquired the parcel here in issue pursuant to a quitclaim deed dated October 17, 1997. (Dept. Ex. No. 2D)

4. The parcel here in issue is improved with a horse barn. The horse barn contains 16 horse stalls and an area for washing horses. This parcel also contains a pole barn used for hay storage. The hay in the pole barn during 1998 belonged to the horse owners who were renting stalls in the horse barn. (Tr. pp. 16, 17, & 24, Appl. Ex. No. 6)

5. The applicant rents horse stalls year around in the horse barn on the parcel here in issue. The stalls are rented to horse owners (hereinafter also referred to as "tenants") who keep horses there so they can train them on the applicant's one-half mile dirt race track which is nearby. (Tr. p. 17, Appl. Ex. No. 4)

6. During 1998 there were no written leases with the tenants who kept horses in the horse barn. The rent was $10.00 per month for each stall. The horse owners were required to remove and dispose of manure in the stalls which they rented. It was understood that the horse

owners would provide hay for their horses. The horse owners were also required to drive the water truck to condition the track. The water truck, which had a sprayer on the back, was owned by the tenants who boarded horses on the fair grounds. (Tr. pp. 17-19 & 24)

7. During 1998, none of the stalls in the horse barn on the parcel here in issue were ever used for any purpose other than boarding horses. During an average month, other than at fair time, it was estimated that approximately one-half of the stalls in the horse barn on this parcel were rented out. (Tr. pp. 17 & 24)

8. During 1998, the Edwards County Fair was held during the fourth week in July from Saturday through the following Saturday. Any tenant of the horse barn on the parcel here in issue who did not have horses entered in the races at the fair on Monday, Tuesday, or Wednesday night was required to vacate their stalls during fair week. (Tr. pp. 9, 10, 24, & 27)

9. There are a total of five horse barns on the applicant's fairgrounds including the one at issue. The amount of stall fees collected from all the horse barns on the fairgrounds at times other than fair week during 1998 totaled $9,706.00. (Tr. p. 19, Appl. Ex. No. 4)

10. I take Administrative Notice of the Department's decision in Docket No. 88-24-19 in which the Department exempted four parcels owned by the applicant. The exemption did not include the two horse barns located on those parcels and the land on which said horse barns were located. The Department determined that those barns and the land on which they were located were not in exempt use. (Dept. Ex. No. 2H)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to this constitutional grant of authority, the General Assembly has enacted property tax exemption provisions. Concerning agricultural societies 35 **ILCS** 200/15-85 provides as follows:

> All property used exclusively by societies for agricultural or horticultural purposes, and not used with a view to profit, is exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989); and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore very clear that the burden of proof is on the applicant to establish that it is entitled to an exemption.

Based upon the quitclaim deed, I conclude that the applicant owned the parcel here in issue and the improvements thereon during the entire 1998-assessment year.

I conclude that a fair association has been determined to be an agricultural association. *See* Op. Att'y Gen. (Ill.) 58 (1949).

During all of 1998, other than fair week, the applicant leased the stalls in the horse barn on this parcel to horse owners who kept horses there that were being trained. The horse owners utilized the applicant's nearby one-half mile dirt track in this training. The horse owners paid $10.00 in rent per-month per stall to the applicant. The stalls in the horse barn on this parcel are rented out pursuant to oral leases. At times other than fair week approximately one-half of the stalls were rented. The horse barn on this parcel was not used for any other purpose during 1998. The horse owners understood that as part of their oral lease agreement with the applicant they were required to remove and dispose of manure in the barn and to provide hay for their horses in the stalls that they rented.

The tenants renting stalls in the five horse barns on the applicant's fairgrounds owned a water truck with a sprayer on the back. The horse owners were required to drive that truck and spray water on the dirt track to keep it in condition for training and racing practice. In addition, the pole barn on this parcel was used by the horse owners to store hay which belonged to them.

The lease of stalls in the horse barn on this parcel to horse owners, I conclude, was with a view to profit for the applicant. The applicant not only received the $10.00 per-month stall rent but also the horse owners provided their own hay, cleaned up, and removed manure from the barn. The horse owners also used the tank truck which they owned to condition and maintain the racetrack. The tenants used the pole barn on this parcel to store their hay.

The court cases decided concerning the agricultural and horticultural exemption were all decided pursuant to the language of that exemption as found in the Revenue Act of 1939. The language of that exemption as it exists today in the Property Tax Code is quite different than the earlier language of the Revenue Act of 1939.

The agricultural and horticultural exemption contained in the Revenue Act of 1939, in force before January 1, 1994, exempted certain property as follows:

> All property which may be used exclusively by societies for agricultural, horticultural, mechanical or philosophical purposes, and not for pecuniary profit.

The agricultural and horticultural exemption contained in the Property Tax Code which became effective on January 1, 1994, and which during the 1998-assessment year was found at 35 **ILCS** 205 15-85 reads as follows:

> All property used exclusively by societies for agricultural or horticultural purposes, and not used with a view to profit, is exempt.

The Supreme Court held that an exemption for mechanical purposes was unconstitutional in Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). The Court also held an exemption for philosophical purposes to be unconstitutional in International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). These decisions explain certain of the changes and deletions in the statutory language from the Revenue Act of 1939 to the Property Tax Code. Also the provision "not for pecuniary profit" which appeared in the Revenue Act of 1939 has changed to "not used with a view to profit" in the Property Tax Code. The exemption for charitable organizations found in the Code at 35 ILCS 200/15-65 also contains the provision "and not leased or otherwise used with a view to profit". This language is exactly the same as the language in the charitable exemption in the Revenue Act of 1939, which preceded it and which had court cases interpreting it.

The new language in the agricultural and horticultural society exemption found in the Property Tax Code is very similar to the language in the charitable exemption found in the Property Tax Code. Illinois Courts have consistently held that the use of property to produce income is not a charitable use. They have done so pursuant to the foregoing language concerning charities found in the Revenue Act of 1939. This is true even if the income is used for charitable purposes. *See* People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). *See also* The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should be pointed out that the applicant, pursuant to the horse barn stall leases, not only received the $10.00 per-month per stall rent, but also the benefits of the horse owners equipment and labor in maintaining and conditioning the race track. It must also

be pointed out that these oral lease arrangements concerning the stalls in the horse barn provide a benefit to the horse owners who are in the business of breeding and training horses for profit in the racing business.

It therefore cannot be said that the applicant's leasing of stalls in the horse barn on this parcel are leases by a society for agricultural purposes. In addition, the horse owners are using the pole barn for hay storage in their breeding and racing business. I therefore conclude that the parcel here in issue and the horse barn and pole barn located thereon was used with a view to profit during the 1998-assessment year.

I therefore recommend that Edwards County Parcel Index No. 2-03-086-06 remain on the tax rolls for the 1998-assessment year. I further recommend that said parcel be assessed to the applicant, the Edwards County Fair Association, the owner thereof for the 1998-assessment year.

Respectfully Submitted,

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George H. Nafziger
Administrative Law Judge
May 26, 2000